IN THE HIGH COURT OF JUDICATAURE FOR RAJASTHAN AT JODHPUR.

JUDGMENT.

(1) S.B. Civil Misc. Appeal No.42/1983
Mangilal vs. Chunnilal & ors.

(2) S.B. Civil Misc. Appeal No.49/1986
Mangilal & ors, vs. Chunnilal & ors.

against the judgment and award dated 30.8.1982 in Case No.3/73 and dated 30.9.1985 in Case No.2/73 passed by the learned Workman Compensdation Comissioner, Udaipur

Date of Judgment: August 18, 2006.

PRESENT.
HON'BLE MR. PRAKASH TATIA, J.

Mr. Ghanshyam Vaishnav for the appellant.
Mr. S.K. Punia for Mr. Sanjay Mathur for the respondents.

BY THE COURT:

These two appeals are arising out of the two separate award passed by the learned Workman Compensation Commissioner, Udaipur in Claim Cases Nos.2/73 and 3/73.

Brief facts of the case are that one Bhanwar Lal gave building contract to one Amba Lal Khatik. Amba Lal Khatik engaged some labours for the said contract work. On 30.8.1972, accident occurred and one Ganeshi and another Narbada died in the said accident during course of their employment with Amba Lal Khatik. The claimants filed the claim petitions against said Bhanwar Lal and Amba Lal under the provisions of

the Workmen's Compensation Act, 1923.

The learned Workman Compensation Commissioner, Udaipur initially allowed the claim petitions but before that, Bhanwar Lal died and, therefore, Bhanwar Lal's son Mangilal submitted application before the learned Workman Compensation Commissioner, Udaipur for recalling and setting aside of the original award but that was dismissed by the learned Workman Compensation Commissioner, Udaipur in both the cases. Said Mangilal preferred revision petition before this High Court which was allowed by this Court on 28.8.1978. This Court directed the learned Workman Compensation Commissioner, Udaipur to decide the claim petitions afresh after impleading Mangilal as party. The learned Workman Compensation Commissioner, Udaipur, after giving opportunity of hearing to the parties, including Mangilal, allowed the claim petitions in both the claim cases and awarded a petty some of Rs.7000/- to the claimants in a case where the lady died in each case. In the case arising out of death of Ganeshi, in addition to compensation of Rs.7000/-, the learned Workman Compensation Commissioner, Udaipur also awarded 25% penalty, amounting to Rs.1750/- and interest @ 6% per annum, amounting to Rs.4200/- upto August, 1982 and other expenses. In total, in the case of Ganeshi, the claim awarded to the claimants is Rs.13,014/-. These two awards have been challenged by preferring two appeals inspite of the fact that only compensation of Rs.7000/- in one

case and Rs.7000/- and penalty and interest in another case, has been awarded by the learned Workman Compensation Commissioner, Udaipur.

No cross appeals or cross-objections have been filed by the claimants.

According to the learned counsel for the appellant, deceased Bhanwarl Lal did not engage two labours who died in the accident. According to the learned counsel for the appellant, the learned Workman Compensation Commissioner, Udaipur committed error of law in awarding compensation against the Principal and not against contractor Amba Lal in whose employment the deceased ladies were working. It is also submitted that Amba Lal alone was the in-charge and responsible for the work. Amba Lal entered into the agreement with Bhanwar Lal that he alone shall be responsible for all the losses, if any is caused or suffered by any body during course of completion of the work. In view of the said agreement between Bhanwar Lal and Amba Lal, the award could have been passed only against Amba Lal-contractor and not against Bhanwar Lal. It is also submitted that the learned Workman Compensation Commissioner, Udaipur has not passed any order in favour of Bhanwar Lal (or his successor) so that they may recover the amount from the contractor.

So far as the question of fact is concerned, that the two ladies

died in the accident, there is no dispute. Assuming for the sake of argument, that there was agreement between the Principal and the Contractor, Bhanwar Lal and Amba Lal, providing for payment of compensation by contractor Amba Lal, even then in view of the provisions made under sub-section (1) of Section 12 of the Workmen's Compensation Act, 1923, the employees or the claimants, as the case may be, are entitled to recover the compensation from the Principal employer, as if the workman had been immediately employed by the Principal. In view of the above, I do not find any merit in the submission of the learned counsel for the appellant that the the learned Workman Compensation Commissioner, Udaipur has committed any error of law in passing the award against the Principal. So far as recovery of amount from the contractor is concerned, there is a specific provision under sub-section (2) of Section 12 of the Act of 1923. The Principal can recover the amount from the contractor and, therefore, the the learned Workman Compensation Commissioner, Udaipur could have passed the order in favour of the appellant allowing the appellant to recover the amount from the contractor under sub-section (2) of Section 12 of the Act of 1923, but the learned Workman Compensation Commissioner, Udaipur, after considering the objection of the claimant about admissibility of the agreement, held that the document was tendered in evidence and it was marked as exhibit but has not been

proved by evidence, therefore, no liability can be fastened upon the contractor on the basis of said agreement. It appears from the reasons given in the impugned awards that the employer in fact wanted to shift his liability upon only the contractor and he did not try to prove the fact otherwise of his entitlement for recovery of the amount from the contractor. Since the learned Workman Compensation Commissioner, Udaipur has held that since the work of deceased Bhanwar Lal was got completed through Amba Lal and, therefore, Bhanwar Lal is liable to pay the compensation. Therefore, the learned Workman Compensation Commissioner, Udaipur held the contractor responsible for the work. In view of the above finding of fact of the learned Workman Compensation Commissioner, Udaipur, the appellant is entitled to recover the amount from the contractor Amba Lal khatik in accordance with law, but so far as initial liability of payment of compensation by deceased Bhanwar Lal is concerned, the learned Workman Compensation Commissioner, Udaipur righly held deceased Bhanwar Lal liable.

In view of the above, both the appeals are partly allowed with liberty to the appellant to recover the amount from the contractor.

(PRAKASH TATIA),J.

mlt.